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UBER TECHNOLOGIES, INC.  
14 and OTTOMOTTO LLC

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 WAYMO LLC,  
19 Plaintiff,  
20 v.  
21 UBER TECHNOLOGIES, INC.,  
22 OTTOMOTTO LLC; OTTO TRUCKING  
LLC,  
23 Defendant.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER  
TECHNOLOGIES, INC. AND  
OTTOMOTTO LLC'S RESPONSE TO  
NON-PARTY LYFT, INC.'S MOTION  
FOR RELIEF FROM NON-  
DISPOSITIVE PRETRIAL ORDER OF  
MAGISTRATE JUDGE**

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

1 Pursuant to Civil L.R. 72-2 and this Court's Order on July 17, 2017 (Dkt. No. 884),  
 2 Defendants Uber Technologies, Inc. and Ottomotto LLC (hereinafter "Uber") hereby file their  
 3 response to Non-Party Lyft's Motion for Relief from Non-Dispositive Pretrial Order of  
 4 Magistrate Judge (Dkt. No. 877).

5 Lyft is not a party to this litigation; nor is it subject to the disputed document requests  
 6 which Uber served on Waymo. Lyft nonetheless seeks to object to Magistrate Judge Corley's  
 7 order granting Uber's motion to compel responses by Waymo to those requests. Leaving aside  
 8 whether Lyft has standing to object, Lyft's objections are based on new arguments that Lyft failed  
 9 to present to Magistrate Judge Corley in response to Uber's motion to compel, and thus have been  
 10 waived. Lyft's arguments are also inconsistent with the deference afforded to Magistrate Judge  
 11 Corley's order, particularly where Magistrate Judge Corley had no reason to consider issues  
 12 neither Waymo nor Lyft raised in the briefing on Uber's motion to compel.

13 Accordingly, Uber respectfully requests the Court deny Lyft's motion for relief.

#### 14 **I. BACKGROUND**

15 Lyft is a ride-sharing company, and a competitor of Uber's. (Lyft Mot. for Relief, Dkt.  
 16 No. 877 at 4.) In May 2017, while this litigation was pending, Lyft and Waymo entered into a  
 17 deal to collaborate on self-driving cars. (*See id.* at 1.)

18 Uber served subpoenas on Lyft requesting the production of documents and a deposition  
 19 regarding various aspects of the deal between Lyft and Waymo. (Luedtke Decl. in Supp. of Lyft  
 20 Mot. to Quash, Exs. A-B, Dkt. 646-1.) On June 16, 2017, Lyft filed a motion to quash those  
 21 subpoenas, arguing that Uber should not be permitted to discover commercially sensitive  
 22 information from a non-party, and that Uber should instead seek such information from Waymo  
 23 in the first instance, given the "overlapping" discovery requests Uber had served on Waymo.  
 24 (Lyft Mot. to Quash, Dkt. No. 646 at 10.) After briefing on the motion to quash, Magistrate  
 25 Corley granted Lyft's motion. (Order, Dkt. No. 832.)

26 As Lyft noted in its motion to quash, Uber served related discovery requests on Waymo  
 27 requesting production of documents regarding the Waymo/Lyft deal. (Lyft Mot. to Quash, Dkt.  
 28 No. 646 at 10.) In response, Waymo refused to produce documents for the following requests for

1 production:

- 2 • RFP 149: All agreements (including exhibits) with Lyft regarding autonomous vehicles, including the Waymo/Lyft deal;
- 3 • RFP 150: Any letter of intent or interest relating to the Waymo/Lyft deal;
- 4 • RFP 151: Any term sheet relating to the Waymo/Lyft deal;
- 5 • RFP 152: Any definitive agreement relating to the Waymo/Lyft deal;
- 6 • RFP 153: Any analysis or due diligence relating to the Waymo/Lyft deal;
- 7 • RFP 154: Documents sufficient to show the dates of the first ten communications between Waymo and Quinn relating to the Waymo/Lyft deal;
- 8 • RFP 155: Documents sufficient to identify all individuals at Waymo or Lyft who were responsible for negotiating or conducting due diligence relating to the Waymo/Lyft deal;
- 9 • RFP 156: Documents sufficient to identify the first date that Waymo began discussion of any potential merger or agreement with Lyft.

9 (Yang Decl. in Supp. of Defs. Mot. to Compel, Ex. 5, Dkt. No. 688-7 at 5-8.)

10 Uber filed a motion to compel responses from Waymo to these requests (and others).  
 11 (Uber Mot. to Compel, Dkt. No. 687.) Waymo filed a brief opposing Uber's motion, but Lyft did  
 12 not. (Waymo Opp'n, Dkt. No. 746.) Magistrate Judge Corley subsequently ruled that Waymo  
 13 was required to respond to Uber's Request Nos. 149-153, and 156, but denied Uber's motion as to  
 14 Request Nos. 154 and 155. (Order, Dkt. No. 832.) Magistrate Judge Corley's Order directed that  
 15 "[t]he documents shall be produced on an outside attorneys' eyes only basis." (*Id.* at 3.)

16 Lyft now seeks to object to Magistrate Judge Corley's order requiring Waymo to respond  
 17 to six discovery requests by producing documents that are in Waymo's possession or control.

## 18 II. LEGAL STANDARD

19 Review of a magistrate judge's order on non-dispositive issues is deferential. As this  
 20 Court has held:

21 [A] non-dispositive order entered by a magistrate must be deferred to unless it is  
 22 'clearly erroneous or contrary to law.' *Grimes v. City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). In contrast to dispositive matters,  
 23 orders of a magistrate judge on non-dispositive matters 'are not subject to de novo determination,' and '[t]he reviewing court may not simply substitute its judgment for that of the deciding court.' *Ibid.*

24 *Oracle Am., Inc. v. Google Inc.*, No. C 10-03561 WHA, 2011 WL 5024457, at \*3 (N.D. Cal. Oct.  
 25 20, 2011) (Alsup, J.) (rejecting "argument that legal conclusions (as opposed to factual findings)  
 26 in a non-dispositive pretrial order of a magistrate judge are reviewed *de novo*").

### III. ARGUMENT

Lyft effectively asks this Court (1) to permit Lyft to raise new arguments in opposition to Uber's motion to compel discovery from Waymo and (2) to ignore the deference due the Magistrate Judge's order. Neither is appropriate, and Lyft's objections should be denied.

#### A. Lyft does not have standing to object.

Lyft is not a party to this action, and never filed a brief in response to Uber's motion to compel Waymo, or otherwise formally sought to oppose the motion or intervene to protect any rights it might have. Because even a *party* may not raise new arguments in a motion for reconsideration of a magistrate judge's ruling, this Court should not consider any of Lyft's arguments in its motion for "relief" from an order to which it is not subject, arising from a motion to compel Waymo, on which Lyft did not formally weigh in before Magistrate Judge Corley. *United States v. Boyce*, No. CV 13-00601 MMM JEMx, 2014 WL 7507240, at \*7 (C.D. Cal. May 2, 2014) (deeming arguments not made before the magistrate to be waived, and holding that "[p]arties must take before the magistrate, not only their best shot but all of their shots." (internal quotation marks omitted)); *cf. Herrera v. Gipson*, No. 2:12-CV-0508 KJM DAD P., 2014 WL 4230915, at \*1 (E.D. Cal. Aug. 25, 2014) (citing standards of review under Fed. R. Civ. P. 72(a)).

Even in its briefing on its motion to quash Waymo's requests directed to Lyft, Lyft did not ask Magistrate Judge Corley to quash Uber's related requests to Waymo, despite noting that "Uber has served overlapping requests on Waymo." (Lyft Mot. to Quash, Dkt. No. 646 at 10.) While Lyft noted in passing that it objected to any discovery regarding the deal, Lyft's briefing focused on distinguishing itself from Waymo as a non-party. (*See e.g., id.* at 2 ("particularly for non-party discovery"); at 3 ("Lyft is a non-party who understands that it has not been identified in any party's disclosures").) Perhaps more importantly, Lyft argued that Uber should seek documents and information from Waymo instead of Lyft: "Uber could (and should) first seek that information from the actual parties to this litigation [i.e., Waymo]." (*Id.* at 4.)

Magistrate Judge Corley granted Lyft's motion, thereby denying all discovery Uber sought from Lyft. Uber thus now can only discover relevant documents and information from Waymo, as Magistrate Judge Corley effectively recognized in granting Uber's motion to compel

1 production of documents from Waymo. Lyft cannot seek “relief” from an order to which it is not  
2 subject.

3 In addition, Lyft cannot have it both ways. Having successfully argued that Uber should  
4 seek the relevant documents and information from Waymo in the first instance, rather than Lyft,  
5 Lyft should not be permitted now to oppose Uber’s efforts to do so, particularly where Lyft failed  
6 to raise objections to Uber’s motion to compel documents from Waymo.

7 **B. Lyft’s arguments are inconsistent with the standard of review.**

8 Leaving aside the impropriety of Lyft’s filing, Lyft’s new arguments regarding Uber’s  
9 motion to compel discovery from Waymo are inconsistent with the deference due the magistrate’s  
10 order and the relevant facts.

11 *First*, the Magistrate Judge did not apply the incorrect standard when reviewing Uber’s  
12 discovery requests. While Lyft asserts that the Magistrate Judge was required to make express  
13 findings regarding whether the production of documents regarding the Waymo/Lyft deal is  
14 “necessary,” neither Waymo nor Lyft raised that issue with Magistrate Judge Corley, and  
15 Magistrate Judge Corley thus had no need to expressly address the issue. Waymo instead  
16 opposed production primarily on the basis of relevance, and Magistrate Judge Corley made clear  
17 the relevance of the documents sought in granting Uber’s motion. Among other things,  
18 Magistrate Judge Corley held that (1) Request Nos. 149 to 153 and 156 are relevant to Waymo’s  
19 claim of damages and to Waymo’s request for permanent injunctive relief; and (2) Waymo and  
20 Lyft “should have expected that [the deal] could become relevant” to this litigation because they  
21 “entered into the deal in the midst of [this litigation.]” (Order, Dkt. No. 832 at 3.)

22 Further, Magistrate Judge Corley’s ruling was consistent with the relevant standard  
23 regarding necessity. In considering the requests as to Lyft, Magistrate Judge Corley quoted  
24 applicable Ninth Circuit case law regarding the “‘necessary’ restriction” on document requests  
25 aimed at commercially sensitive materials, noting that this restriction is “broader” for non-parties.  
26 (Order at 4 (quoting *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980).)  
27 Because Magistrate Judge Corley’s order quashed all of Uber’s requests to Lyft, the order  
28 contemplated that information regarding the Waymo/Lyft deal would only be available via

1 discovery from Waymo. And on the issue of the related discovery from Waymo, Magistrate  
2 Judge Corley held that Uber is “entitled to develop [its] own defense to [Waymo’s] claims for  
3 relief and need not rely solely on what [Waymo] contends is relevant,” (*id.* at 3), thereby  
4 confirming that the information is necessary for Uber to prepare the case for trial. Further,  
5 Magistrate Judge Corley held that the “commercially sensitive” nature of the documents Uber  
6 seeks from Waymo does not make them non-discoverable, and additionally directed that “[t]he  
7 documents shall be produced on an outside attorneys’ eyes only basis.” (*Id.*) Magistrate Judge  
8 Corley’s analysis thus properly addressed the relevant necessity and confidentiality concerns.

9 Contrary to Lyft’s assertions, the fact that Waymo will respond to generalized requests  
10 regarding business plans does not make documents and information specific to the Lyft deal any  
11 less necessary for Uber’s defense, let alone duplicative of those more general requests. As Uber  
12 explained in the briefing before Magistrate Judge Corley, documents and information specific to  
13 the Waymo/Lyft deal are particularly relevant given that the transaction aims to bolster Waymo’s  
14 efforts to use self-driving technology to compete in the ride-sharing industry—a rationale that  
15 parallels Uber’s acquisition of Ottomotto. Uber’s requests regarding the Lyft deal cannot be  
16 unreasonably cumulative or duplicative when they are focused on a specific deal that is directly  
17 relevant to this litigation.

18 *Second*, Lyft has no basis to seek narrowing of requests to which it is not subject, and to  
19 which it failed to object previously. While Lyft stresses that it “has controlled [the information’s]  
20 dissemination even within Lyft,” (Lyft Mot. for Relief, Dkt. No. 877 at 4), the requests to which it  
21 now objects seek discovery from Waymo, of documents that Waymo created or that Lyft  
22 disclosed to Waymo, and thus are in Waymo’s possession or control. Lyft has shared this  
23 purportedly sensitive information with Waymo, and the deal has been publicly announced while  
24 this lawsuit was pending. Whether Lyft has shared its business plans with its own employees has  
25 no bearing on Magistrate Judge Corley’s finding that the information requested *from Waymo* is  
26 relevant and discoverable.

1 Dated: July 17, 2017

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2  
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